

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SAVANNAH MADISON
PARKER, MORGAN SLOAN PARKER, and
OLIVIA SIMONE PARKER, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ROY PARKER,

Respondent-Appellant.

UNPUBLISHED
April 20, 2001

No. 226840
Oakland Circuit Court
Family Division
LC No. 99-619565-NA

Before: Cavanagh, P.J., and Markey and Collins, JJ.

PER CURIAM.

Respondent, Roy Parker, appeals as of right the termination of his parental rights to the three minor children pursuant to MCL 712A.19b(3)(g) and (h); MSA 27.3178(598.19b)(3)(g) and (h). We affirm.

On appeal respondent argues that neither statutory ground for termination was met by clear and convincing evidence. We disagree. In terminating respondent's parental rights, the trial court relied on MCL 712A.19b(3)(g) and (h); MSA 27.3178(598.19b)(3)(g) and (h). Subsection 19b(3)(h) allows a trial court to terminate a respondent's parental rights if:

The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

Subsection 19b(3)(g) allows the trial court to terminate a respondent's parental rights if:

The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to

provide proper care and custody within a reasonable time considering the child's age.

A family court may not terminate a respondent's parental rights unless at least one of the statutory grounds for termination is established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 360; 612 NW2d 407 (2000). This Court reviews the findings of fact under the clearly erroneous standard. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Once a statutory basis for termination is established, the trial court shall terminate parental rights unless it finds that doing so is clearly not in the child's best interests. *Trejo, supra* at 344; see also MCL 712A.19b(5); MSA 27.3178(598.19b)(5); MCR 5.974(F)(3). The trial court's ultimate decision regarding termination is reviewed in its entirety for clear error. *Trejo, supra* at 356-357.

Respondent argues that, although he has been imprisoned, he provided an appropriate "plan" for his children because he placed the children with a suitable relative, his aunt, prior to petitioner, Family Independence Agency (FIA), becoming involved in the matter. We disagree.

Roger Ramirez, a special agent with the Federal Bureau of Investigation, testified that he investigated a bank robbery in Coldwater, Michigan which lead to the arrest of respondent and his wife, mother of the children, Dawn Parker.¹ Ramirez indicated that respondent and his wife fled to Canada, with the minor children, during the FBI's investigation of the bank robbery and were ultimately arrested and extradited to the United States. Subsequently, respondent was convicted of armed bank robbery and possession of a firearm during the commission of a felony in the United States District Court and was sentenced to thirteen years and one month imprisonment in a federal penitentiary. Respondent's wife pleaded guilty to unarmed robbery in Branch County, Michigan and was sentenced to at least twenty-eight months in a state correctional facility.

Joyce Parker, respondent's aunt, testified that after respondent and his wife were arrested in Canada, she was contacted by Children's Aid Society of Canada in February 1999 and had to travel to Canada to pick up the minor children.² Parker testified that the children were released by the Canadian authorities into her custody after respondent's wife signed an authorization. Parker testified that she did not have any legal rights over the children and that when she picked up the children from Canada, they had no possessions, not even clothing, and no medical records or birth certificates. Because she had no legal authority to have custody of the children, the following day Parker contacted Child Protective Services for assistance. Carolyn Janisse, from Child Protective Services of the FIA, testified that the children were not legally placed with Parker until the FIA's involvement. Parker further testified that neither parent ever offered her any financial support, food, or clothing for the children.

¹ Dawn Parker was also subject to the termination proceedings, however, she pleaded responsible to the temporary wardship allegations and the children remained under the care of the FIA.

² At that time there were only two children, the third having been born while respondent's wife was incarcerated.

Parker also testified that when the children initially came under her care, they had difficulties. The oldest child, at two and one-half years, exhibited extreme behavioral problems, including a propensity to fight, an attempt to stab her younger sister in the chest with a fork, had no obvious bond with her sister, and repeatedly used the “F word.” The six month old child was not active, just laid silently, and displayed no response to tickling. Janisse testified that she observed the youngest child in February 1999, when Parker initially contacted the FIA, and the child appeared developmentally delayed, including that she was unable to sit up or stabilize her head. Parker testified that, at the time of trial, both children had made progress – the oldest was in counseling and the younger child was walking, talking, and displaying other age-appropriate characteristics.

Upon review of the record evidence, we cannot conclude that the court clearly erred in finding that at least one statutory basis for termination of respondent’s parental rights was established by clear and convincing evidence. Respondent will be imprisoned for a period well exceeding two years, respondent did not and has not provided nor made arrangements to provide financial support, clothing, food, or other necessities for the children, and there is no reasonable expectation that respondent will be able to provide proper care and custody within a reasonable time considering the ages of the children. Respondent contends that he provided a “plan” for his children by placing them with his aunt. However, the evidence reveals that respondent did not “place” the children with his aunt. Respondent did not initiate or participate in any formal or legal arrangement to ensure that the children would receive the proper and necessary care. Instead, it appears that respondent fled to Canada with his wife and children when it appeared that he was a suspect in an armed bank robbery and, after his arrest, the children were taken into custody by the Canadian authorities. The children were subsequently released to respondent’s aunt without any personal belongings or necessities. Respondent’s aunt testified that respondent had not provided financial or other support for the children while the children were under her care. Consequently, the trial court did not err in holding that at least one statutory basis for termination was properly established.

Next, respondent argues that terminating his parental rights was clearly not in the best interests of the children. Respondent primarily argues that, because he is still married to the children’s mother and poses no threat to the children, his parental rights should not have been terminated. Respondent has inappropriately placed the focus of the best interests inquiry on his circumstances and such reasoning is not persuasive. Because a statutory ground for termination was established, the family court was required to terminate respondent’s parental rights unless, from the evidence on the whole record, it appeared that termination was clearly not in the children’s best interests. This Court has held that the parental rights of one parent may be terminated without terminating the parental rights of the other parent. *In re Marin*, 198 Mich App 560, 568; 499 NW2d 400 (1993). Further, in considering the children’s best interests, the family court recognized that respondent had not seen two of the children for quite a long time and had never seen the third child. The family court also acknowledged review of respondent’s psychological evaluation which, by respondent’s counsel’s admission, was not favorable. After

review of the record evidence, we hold that the trial court did not err in concluding that termination of respondent's parental rights was not clearly contrary to the children's best interests.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Jeffrey G. Collins